AMENDMENTS TO THE CLAIMS:

Claims 1-49 (Cancelled)

Add new claims 50-55 as follows:

50.   (New) A method for forming an image by a scanning charged particle apparatus, comprising steps of:

focusing a plurality of two dimensional images each at different focus points by detecting particles emitted from a sample using a scanning charged particle beam;

evaluating focus evaluation values of each pixel on the two dimensional images;

selecting the pixel having larger focus evaluation values than at least one other pixel at same coordinates of the two dimensional images; and

synthesizing the selected pixels two dimensionally for forming the image of a scanning range of the charged particle beam.

51.   (New) A charged particle beam apparatus comprising:

a charged particle source;

a scanning deflector for scanning a charged particle beam emitted from the charged particle source on a sample;

an objective lens for adjusting a focus of the charged particle beam;

a detector for detecting particles emitted from the sample; and

an image processor for forming an image based on the particles detected by the detector, wherein:

said image processor memorizes a plurality of two dimensional images on different focus points, selects a pixel having a larger focus evaluation value than at least one other

pixel at same coordinates of the two dimensional images, and forms the image by arranging the selected pixels two dimensionally.

52.   (New) A charged particle beam apparatus comprising:

a charged particle source;

a scanning deflector for scanning a charged particle beam emitted from the charged particle source on a sample;

an objective lens for focusing the charged particle beam;

a detector for detecting particles emitted from the sample; and

a controller for adjusting the objective lens, wherein:

said controller calculates a focal depth of the charged particle beam and determines a focus change amount based on the calculated focal depth when the focus of the charged particle beam is changed sequentially.

53.   (New) A charged particle apparatus as claimed in claim 52, wherein said controller calculates said focal depth based on image forming conditions.

54.   (New) A charged particle apparatus as claimed in claim 53, wherein said image forming conditions include magnification of the image, an acceleration voltage of the charged particle beam, beam resolution, and/or a number of pixels of the image.

55.   (New) A charged particle apparatus as claimed in claim 52, wherein said controller has an input device for inputting a number of images, and determines the focus change amount based on said calculated focal depth and the number of images inputted.